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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 10, 2000

PETITION OF

THE CITY OF NORFOLK

CASE NO. PUE000485

For declaratory judgment

ORDER INVITING RESPONSE AND REQUEST FOR HEARING

On September 26, 2000, the City of Norfolk ("Norfolk" or "Petitioner") filed a petition for declaratory judgment with the State Corporation Commission ("Commission"). In its petition, Norfolk requests that the Commission declare that the City of Virginia Beach, Virginia ("Virginia Beach") is precluded from filing a petition to take by condemnation proceedings any property belonging to Norfolk unless and until Virginia Beach, pursuant to § 25-233 of the Code, first seeks and obtains the Commission's approval to initiate such proceedings.

In its petition, Norfolk states that § 25-233 of the Code provides that no corporation shall file a petition for condemnation of property belonging to another corporation possessing the power of eminent domain unless the Commission certifies that a public necessity or essential public convenience requires such condemnation proceedings; this Code section further provides that no corporation may take property

owned by and essential to the purposes of another corporation possessing the power of eminent domain.

The Petitioner states that both Norfolk and Virginia Beach are municipal corporations with the power of eminent domain. Norfolk represents that it owns the land that is the subject of condemnation proceedings initiated against it by Virginia Beach in the Circuit Court of the City of Virginia Beach ("Circuit Court"). This land consists of the real property and facilities known as the Stumpy Lake reservoir ("Stumpy Lake") and the property in the immediate vicinity of Stumpy Lake ("Adjacent Property"). The Petitioner further represents that Stumpy Lake is an integral part of the municipal public utility water system of Norfolk, and therefore is essential to the purposes of Norfolk.

According to the petition, Virginia Beach filed two condemnation petitions in the Circuit Court and one application for approval of condemnation with the Commission. On July 14, 2000, Virginia Beach filed a petition in the Circuit Court for condemnation to take the approximately 1,025 acres of land that comprise the Adjacent Property as referenced above.¹ Also on

¹ A copy of the petition for condemnation filed in the Circuit Court accompanying the petition for declaratory judgment filed with the Commission describes this land more particularly as certain real property in fee simple together with all improvements and appurtenances known as Stumpy Lake and its surrounding land and facilities, exclusive of the lake waters, lake bottom, the fee underlying the lake bottom, and the pump station.

July 14, 2000, Virginia Beach filed an application with the Commission pursuant to § 25-233 of the Code for the approval of condemnation of the land identified as Stumpy Lake and associated water supply facilities.² On July 20, 2000, Virginia Beach filed another petition in the Circuit Court for condemnation of approximately 434.4 acres of property and facilities that comprise Stumpy Lake as referenced above.³

The Petitioner explains that, on August 4, 2000, it filed identical motions in each action before the Circuit Court to quash notice and dismiss each action for lack of Circuit Court jurisdiction based on the failure of Virginia Beach first to obtain the approval of the Commission for the condemnation proceedings. Norfolk states that, also on August 4, 2000, it filed alternative motions to stay the Circuit Court proceedings pending resolution by the Commission of Virginia Beach's failure

² The application filed with the Commission described more particularly the property and facilities as consisting of the waters of Stumpy Lake, the underlying approximate 433 acres, a 25 foot strip of land surrounding the lake, a dam, an intake structure, pipes connecting the intake to the pump station, a pump station, pipes connecting the pump station to Lake Lawson, and all other water supply facilities associated with Stumpy Lake. The application stated that Virginia Beach had filed a petition in condemnation in the Circuit Court for approximately 1,025 acres surrounding the lake, but maintained that § 25-233 of the Code did not apply to the property adjacent to the lake.

³ A copy of the petition for condemnation filed in the Circuit Court accompanying the petition for declaratory judgment filed with the Commission describes this property more particularly as certain real property in fee simple together with all improvements and appurtenances known as Stumpy Lake and the lake waters, lake bottom, the fee underlying the lake bottom, the pump station, and adjoining property.

to comply with § 25-233 of the Code. Norfolk's petition states that these motions to dismiss are presently pending before the Circuit Court.

On September 22, 2000, the Commission received a letter from Virginia Beach withdrawing its application for approval of the condemnation of the lake and associated water supply facilities identified in the application.

Norfolk argues that, by filing the two petitions in the Circuit Court without first gaining the Commission's approval of the condemnation based upon a public necessity or essential public convenience and a finding that the property is not essential to the purposes of Norfolk, Virginia Beach has violated § 25-233 of the Code.

Norfolk requests that the Commission grant its petition for declaratory judgment that: (1) Virginia Beach must obtain permission from the Commission pursuant to § 25-233 of the Code to condemn any property of Norfolk; and (2) such permission must be obtained before Virginia Beach can file petitions in the Circuit Court to take by condemnation proceedings any property of Norfolk.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this petition should be docketed; that Virginia Beach may be given an opportunity to participate in this proceeding and file a response to Norfolk's petition;

and that Norfolk should be given an opportunity to file a reply to any such response. Thereafter, the Commission may determine this matter on the pleadings or determine if further proceedings are necessary.

Accordingly, IT THERFORE IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE000485.

(2) Virginia Beach may respond to Norfolk's petition by filing with the Clerk of the Commission an original and fifteen (15) copies of any response on or before October 24, 2000. Any response shall be filed with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. PUE000485, and also shall be served upon counsel for Norfolk, Louis Monacell, Esquire, Christian & Barton, L.L.P., 900 East Main Street, Suite 1200, Richmond, Virginia 23219.

(3) On or before November 3, 2000, Norfolk may file a reply to any response filed herein.

(4) This matter is continued generally.

Chairman Moore will not participate in this matter.